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10 UNITED STATES BANKRUPTCY COURT
 11 DISTRICT OF NEVADA

12 In re:

13 USA COMMERCIAL MORTGAGE
 14 COMPANY,

Case No. BK-S-06-10725-LBR
 Case No. BK-S-06-10726-LBR
 Case No. BK-S-06-10727-LBR
 Case No. BK-S-06-10728-LBR
 Case No. BK-S-06-10729-LBR

15 USA CAPITAL REALTY ADVISORS,
 LLC,

CHAPTER 11

16 USA CAPITAL DIVERSIFIED TRUST
 17 DEED FUND, LLC,

Jointly Administered Under Case No.
 BK-S-06-10725-LBR

18 USA CAPITAL FIRST TRUST DEED
 FUND, LLC,

**Statement of Facts In Support of
 Motion For Summary Judgment
 Regarding (1) Responses To The
 USACM Trust's First Through
 Thirty-Third Omnibus Objections To
 Claims Asserting A Secured Status;
 (2) Responses to USACM Trust's
 First Through Third Omnibus
 Objections To Claims Asserting A
 Priority Status; And (3) Newly
 Alleged Secured And Priority Claims**

19 USA SECURITIES, LLC,

20 Debtors.

21 Affects:

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

25 The USACM Liquidating Trust files this Statement of Facts ("SOF") in support of
 26 its Motion For Summary Judgment Regarding (1) Responses To The USACM Trust's First
 27 Through Thirty-Third Omnibus Objections To Claims Asserting A Secured Status; (2)
 28 Responses to USACM Trust's First Through Third Omnibus Objections To Claims

1 Asserting A Priority Status; And (3) Newly Alleged Secured And Priority Claims (the
 2 "Motion"). This Statement of Facts is supported by the Declaration of Geoffrey Berman
 3 ("Berman Decl."), attached as **Exhibit 1**, and **Exhibits A and B** to the Berman
 4 Declaration. The following facts are material to the Motion and undisputed.

5 1. On April 13, 2006 ("Petition Date"), USA Commercial Mortgage Company
 6 ("USACM") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.
 7 USACM continued to operate its businesses as debtor-in-possession pursuant to sections
 8 1107(a) and 1108 of the Bankruptcy Code. (Berman Decl., Exh. 1, ¶ 4.)

9 2. USACM is a Nevada corporation that, prior to the Petition Date, was in the
 10 business of underwriting, originating, brokering, funding and servicing commercial loans
 11 primarily secured by real estate, both on behalf of investors and for its own account.
 12 (Berman Decl., Exh. 1, ¶ 5.)

13 3. This business included the solicitation of individual investors to purchase
 14 fractional interests in loans that USACM originated and then serviced. These investors,
 15 totaling approximately 3,600 as of the Petition Date, are referred to as "Direct Lenders."
 16 (Berman Decl., Exh. 1, ¶ 6.)

17 4. On January 8, 2007, this Court entered its Order Confirming the *Debtors'*
 18 *Third Amended Joint Chapter 11 Plan of Reorganization* ("Plan") [DE 2376].

19 5. The Plan was confirmed by the Bankruptcy Court's January 8, 2007 Order
 20 ("Confirmation Order"). There is no order pending that stays the effect of the
 21 Confirmation Order pending appeal. (Berman Decl., Exh. 1, ¶ 7.)

22 6. The USACM Trust became effective on the Effective Date of the Plan,
 23 March 12, 2007. On the Effective Date, Geoffrey Berman began acting as Trustee.
 24 (Berman Decl., Exh. 1, ¶ 8.)

25 7. USACM's claims and noticing agent received approximately 2,436 proofs of
 26 claim as of January 13, 2007, asserting claims totaling more than \$997,000,000, plus
 27 unknown amounts based on unliquidated Claims. (Berman Decl., Exh. 1, ¶ 12.)

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1 8. Under the Plan, the USACM Trust is the successor to USACM with respect
 2 to standing to seek allowance and disallowance of Claims. (Berman Decl., Exh. 1, ¶ 13.)

3 9. On March 20, 2003, USACM filed its (i) *First through Thirty-Third*
 4 *Omnibus Objections to Claims Asserting Secured Status* (“Secured Claim Objections”)
 5 [DE 3133-3192]. On March 23, 2007, it filed its *First through Third Omnibus Objections*
 6 *to Claims Asserting Priority Status* (“Priority Claim Objections”) [DE 3257-3261]. The
 7 Secured Claim Objections and Priority Claims Objections are collectively referred to
 8 herein as the “Original Objections.” (Berman Decl., Exh. 1, ¶ 14.)

9 10. The Court set April 19, 2007 as the deadline to file a response to the Original
 10 Objections. As to those claimants who did not file responses to the Original Objections,
 11 the Court sustained the objections and reclassified the claims. As to some of the claimants
 12 who filed responses to the Original Objections, USACM entered into stipulations to
 13 reclassify the claims with the claimants. (Berman Decl., Exh. 1, ¶ 15.)

14 11. On May 14, 2007, this Court entered its Stipulated Order Re Notice of
 15 Amended Schedules and Deadline to File Proofs of Claim [DE 3726] extending the
 16 deadline to amend proofs of claim for those persons and entities adversely affected by
 17 USACM’s March 7, 2007 amendments to Schedules E, F, F-1 and G and filing of a new
 18 schedule F-2 by 30 days from notice of the order. Service was accomplished by mail on
 19 May 24, 2007 [DE 3857]. (Berman Decl., Exh. 1, ¶ 16.)

20 12. Following the Court’s May 14, 2007 order, some creditors filed amended
 21 proofs of claim within the time allotted that again improperly asserted secured or priority
 22 status. Also, altogether new claims were filed after May 14, 2007 that likewise asserted
 23 secured or priority status without legitimate basis. (Berman Decl., Exh. 1, ¶ 17.) On July
 24 30, 2007, the USACM Trust filed an objection to each of these claims because they
 25 incorrectly claim secured and priority status.

26 13. **Exhibit A** to the Berman Declaration, which is attached hereto as Exhibit 1,
 27 is a list of the claimants who have improperly asserted secured claims and whose claims
 28 have not yet been reclassified as general unsecured claims (“Disputed Secured Claims”).

1 **Exhibit A** includes those claimants who responded to the Secured Claim Objections, but
 2 did not enter into stipulations to reclassify their claims, and those claimants who, after the
 3 Secured Claim Objections were filed, submitted new proofs of claim that incorrectly
 4 asserted secured claims. (Berman Decl., Exh. 1, ¶ 18.)

5 14. The claimants who filed Disputed Secured Claims allege that because their
 6 loan investments serviced by USACM were secured by collateral of the Borrowers, any
 7 claim they might have asserted against USACM would also be secured. (Berman Decl.,
 8 Exh. 1, ¶ 19.) On July 30, 2007, USACM filed objections to each of these new claims
 9 disputing the claimant's assertion that the claims are secured claims.

10 15. USACM has no property that serves as collateral for the Direct Lender loans
 11 serviced by USACM. There is no document or other evidence that any of the holders of
 12 the Disputed Secured Claims were granted a security interest in any property of USACM,
 13 or that any such security interest was perfected under applicable law. (Berman Decl., Exh.
 14 1, ¶ 20.)

15 16. **Exhibit B** to the Berman Declaration, which is attached hereto as Exhibit 1,
 16 is a list of the claimants who have improperly asserted priority claims and whose claims
 17 have not yet been reclassified as general unsecured claims ("Disputed Priority Claims").
 18 **Exhibit B** includes those claimants who responded to the Priority Claim Objections, but
 19 did not enter into stipulations to reclassify their claims and those claimants who, after the
 20 Priority Claim Objections were filed, submitted new proofs of claim that improperly
 21 asserted priority status.

22 17. There is no basis in the Disputed Priority Claims, the Responses to the
 23 Original Objections or in the books and records of the Debtors that would support a
 24 priority claim for any of the claimants listed in **Exhibit B**.

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1 Dated July 30, 2007.

2 LEWIS AND ROCA LLP

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4 By /s/ RC (#6593)

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